

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 01-80361
HON. GEORGE CARAM STEEH

vs.

DANIEL TYRONE MCNEIL,

Defendant.

/

ORDER DENYING DEFENDANT'S REQUEST FOR THIS COURT TO TAKE JUDICIAL
NOTICE [#233]

Defendant requests the court to take judicial notice of a recent decision of the United States Sixth Circuit Court of Appeals in *United States v. Almany*, 598 F. 3d 238 (6th Cir. 2010).¹ Defendant asks this court to not label his present filing as a motion but “entertain it as being a Judicial Notice claim[,]” but nonetheless argues that based on the holding in *Almany*, this court should vacate and set aside his sentence. Therefore, defendant seeks to attack the legality of his sentence based on the *Almany* decision. Petitioner has already sought relief pursuant to 28 U.S.C. § 2255, which this court denied on October 14, 2008. On June 3, 2009, the Sixth Circuit Court of Appeals denied defendant’s application

¹ The *Almany* court held that the plain language of 18 U.S.C. § 924(c)(1)(A), or the “firearm statute” forbids a district court from imposing “its mandatory minimum sentence when a defendant is already subject to another greater mandatory minimum sentence under any other provision of law.” *Id.* at 241-42.

for a certificate of appealability. See Dkt. No. 228.

The court is without jurisdiction to entertain defendant's challenge without certification from the Sixth Circuit Court of Appeals. "[A] prisoner may file a second § 2255 motion only if the appropriate court of appeals certifies the motion either to contain newly discovered exculpatory evidence or to be based on 'a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.'" *In re Hanserd*, 123 F. 3d 922, 929 (6th Cir. 1997); see also, 28 U.S.C. § 2255(h). Petitioner has not sought and obtained the required certification from the Sixth Circuit Court of Appeals.

Accordingly,

IT IS ORDERED that defendant's request for this court to take judicial notice is DENIED.

SO ORDERED.

Dated: June 18, 2010

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 18, 2010, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk